

**Introduced by Senator Machado**

February 20, 2003

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An act to amend Section 56.104 of the Civil Code, relating to confidentiality of medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 598, as amended, Machado. Confidentiality of medical information.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to ~~the~~ a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor. ~~For purposes of that provision, a "psychotherapist" is defined as a person who comes within the definition of a psychotherapist under a specified provision of the Evidence Code and who is a provider of health care, as defined.~~

~~A violation of these provisions that results in economic loss or personal injury to a patient is punishable as a misdemeanor.~~

~~This bill would revise and further limit the circumstances under which a provider of health care, health care service plan, or contractor may release medical information that relates to the patient's participation in outpatient treatment with a psychotherapist unless specifically authorized by the patient or the patient's representative for each release.~~

~~The bill would revise the definition of a psychotherapist for purposes of these provisions by deleting the requirement that the person be a provider of health care. The bill would also define “outpatient treatment” for purposes of these provisions.~~

~~Since a violation of these provisions would be punishable as a misdemeanor, under the circumstances described in existing law, the bill would create a new crime, thereby imposing a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ *no*. State-mandated local program: ~~yes~~ *no*.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 56.104 of the Civil Code is amended to  
2 read:

3 56.104. (a) Notwithstanding subdivision (c) of Section  
4 56.10, no provider of health care, health care service plan, or  
5 contractor may release medical information to persons or entities  
6 authorized by law to receive that information pursuant to  
7 ~~paragraphs (2), (3), (8) to (11), inclusive, and paragraph (17) of~~  
8 ~~subdivision (c) of Section 56.10, or to licensed health care service~~  
9 ~~plans described in paragraph (4) of subdivision (c) of Section~~  
10 56.10, if the requested information specifically relates to the  
11 patient’s participation in outpatient treatment with a  
12 psychotherapist, unless the person or entity requesting that  
13 information submits to the patient pursuant to subdivision (b) and  
14 to the provider of health care, health care service plan, or  
15 contractor a written request, signed by the person requesting the  
16 information or an authorized agent of the entity requesting the  
17 information, that includes all of the following:

18 (1) The specific information relating to a patient’s participation  
19 in outpatient treatment with a psychotherapist being requested and  
20 its specific intended use or uses.



(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.

(3) A statement that the information will not be used for any purpose other than its intended use.

(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this section to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, "psychotherapist" means a person who is *both* a "psychotherapist" as defined in Section 1010 of the Evidence Code *and* a "provider of health care" as defined in subdivision (d) of Section 56.05 of the Civil Code.

(d) This section does not apply to the disclosure or use of medical information by a law enforcement agency or a regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(e) Nothing in this section shall be construed to grant any additional authority to a provider of health care, health care service plan, or contractor to disclose information to a person or entity without the patient's consent.

(f) For the purposes of this section, "outpatient treatment" means treatment provided at a location other than at a health facility defined in subdivision (a) or (b) of Section 1250 of the Health and Safety Code.

~~SEC. 2.—No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~  
2 ~~district will be incurred because this act creates a new crime or~~  
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~  
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~  
5 ~~the Government Code, or changes the definition of a crime within~~  
6 ~~the meaning of Section 6 of Article XIII B of the California~~  
7 ~~Constitution.~~

